

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

IRVING MURRAY, (PRO-SE),  
(PLAINTIFF)

SCRANTON

OCT 26 2017

VS.

PER

DEPT

CLERK

JOHN E. WETZEL (ET AL.),  
(DEFENDANTS)

CIVIL ACTION

No: 3:17-CN-0491

JURY TRIAL DEMAND

JUDGE R. CONABOY

DATED: 10/12/2017

PLAINTIFF'S MOTION TO COMPEL  
DISCOVERY AND BRIEF IN SUPPORT  
OF MOTION TO COMPEL DISCOVERY  
PURSUANT TO RULE 34(B) AND 37(A),  
OF THE FED. RULE. CIVIL. PROCEDURE.,  
NUNC PRO TUNC

The plaintiff, Irving Murray, pro-se moves  
this court respectfully pursuant to rule  
34(b) and 37(a), of the Fed. R. Civ. P., for  
an courts order compelling the  
defendants to produce documents and  
interrogatories requested on july 27<sup>th</sup> 2017.

Dated: OCTOBER 12, 2017,

STATEMENT OF THE FACTS

AND OF THE CASE

This is a § 1983 action filed by a pennsylvania, prisoner at Sci-Mahanoy Correctional facility seeking treatment for Hepatitis C, damages, a declaratory judgment, and for  
(2-OF-8)

Injunctive Relief based on the use of an illegal and unconstitutional policy specifically the [H]epatitis C Interim-protocol and Risk-Stratification

the denial of due process, and the denial of medical and mental health care. abuse, falsified/fabricated medical and mental health records diagnoses, racism, and retaliatory conduct on july 27<sup>th</sup> 2017, the plaintiff served a request for production of documents and interrogatories pursuant to Rules 33 and 34, 26(b)(1), Fed R. Civ. P., as set forth in the plaintiff's declarations and his letters to this court, the defendants failed to respond within 45, day that was given as a courtesy by the plaintiff and defendants did not make any kind of effort but rather circumvent the issues and file a motion to stay

Discovery only to prolong pain and suffering and further damage to plaintiff liver.

nor did defendant obtain an extension from the court by contacting the plaintiff. after (4) four months going on five(s) months the plaintiff requested a response. after several more weeks, defendants still refuse to respond in which they objected to

to the plaintiff requested response. After several more weeks, the defendant's counsel served a letter of response in which they objected to plaintiff's entire request unless he could pay money knowing that it is nearly impossible that he can foot the bill. In other words be able to pay the fees. Defendant's counsel has not responded to the plaintiff's efforts to resolve this ultimate dispute. See plaintiff's letter previously mailed to this court, and his Declarations,

### ARGUMENT- POINT 1

DEFENDANTS HAVE WAIVED THEIR OBJECTION BY THEIR FAILURE TO RESPOND TIMELY OR AT ALL TO THE RESPECTFULL REQUEST

the rules provide that responses and objections to requests for production of documents and interrogatories are to be served within 30 days of the request unless this court grants a shorter or longer time. Rule 34, Fed. R. Civ. P. The defendants, however, waited almost three to four months without obtaining or even seeking permission from this court nor has this court responded (4-OF-8)

to plaintiff's multiple letters regarding a ruling on his Discovery or Injunction/TRO motions nor motions seeking relief and Discovery, or agreement from the plaintiff for this long Delays.

It is well established in federal practice that "discovery objections are waived if a party fails to object timely to interrogatories, production requests, or other discovery efforts" *Godsey v. United States*, 133 F.R.D. 111, 113 (S.D. Miss. 1990); accord, *Morin v. Nationwide Federal Credit Union*, 229 F.R.D. 364, 368 (D. Conn. 2005); *Safeco Ins. Co. of America v. Rawstrom*, 183 F.R.D. 668, 670-73 (C.D. Cal. 1998); *Demary v. Yamaha Motor Corp.*, 125 F.R.D. 20, 22 (D. Mass. 1989) and cases cited. This waiver is enforced even if the objections are based on a claim of privilege, *Marx v. Kelly Hart & Halman, P.C.*, 929 F.2d 8, 12 (1st Cir. 1991); *Fontville v. District of Columbia*, 230 F.R.D. 38, 42-43 (D.D.C. 2005); *Fretz v. Keltner*, 109 F.R.D. 303, 309 (D. Kan. 1986) and cases cited. *U.S. ex rel. Burroughs v. DeNardi Corp.*, 167 F.R.D. 680, 687 (S.D. Cal. 1996). As shown in the next point the discovery sought is not only proper but is highly appropriate and relevant.

POINT-IITHE DISCOVERY SOUGHT IS RELEVANT  
TO THE CLAIMS AND DEFENSES IN  
THIS TYPE OF CASE

Defendants' belated objections state that they shouldn't be subject to Discovery until this court rules on their motion to Dismiss their argument is frivolous. It's another form of sophisticated tactic to intimidate and circumvent the court's final decisions, as well as undermine this court's actions. Rule 26(b)(1), F.R.Civ.P., permits discovery of "any nonprivileged matter that is relevant to any party's claim or defense. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence". See *Barnes v. City of Cincinnati*, 401 F.3d 729, 741-42 (6th Cir. 2005) ("intent" to discriminate); *Hend v. Sprint/United Mgmt. Co.*, 208 F.3d 847, 856 (10th Cir. 2000) (anecdotal evidence of discrimination admissible if incident can be tied to plaintiff's circumstances through, for example, common supervisors and same time frame); *Hynes v. Coughlin* 79 F.3d 285, 290-01 (2d Cir. 1996);.

## CONCLUSION

For all the foregoing reasons, the honorable court should respectfully Grant plaintiff's motion to Compel Discovery. as this is being properly filed in a good faith effort in an attempt to resolve disputes and quickly resolve this case out of respect for this honorable United States of Pennsylvania middle District court Judges.

Dated: October 12<sup>th</sup> 2017.

IRVING MURRAY #KP3561  
301 MOREA ROAD,  
R.T.U / A/A #40 CELL  
FRACKVILLE, PENNSYLVANIA  
17932-0001

pro-se Irving Murray  
SSN: 211-54-4416

CC: Irving Murray File/Diskette  
United States Government/Courts  
Hon. Richard P. Conaboy  
Mumia Abu-Jamal # AM-8335  
ATTY/BRET GROTE ESQ  
PRISON LEGAL NEWS ATTY'S.  
U.S. DEPT. OF JUSTICE

(7-OF-8)

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

IRVING MURRAY, (PRO SE)  
(PLAINTIFF)

CIVIL ACTION  
NO: 3:17-CV-0491

(JUDGE-CONABOY)

VS.

JOHN E. WETZEL (ET. AL.)  
(DEFENDANTS)

DEMAND JURY TRIAL  
DATED: OCTOBER 12, 2017

CERTIFICATE OF SERVICE

I, Irving Murray, hereby certify that I am on this date depositing this motion and brief combined in the United States mail box on the Sci Mahanoy's A-unit RTU. Out going U.S. mail Plaintiff's motion to compel discovery and brief with an Proposed order attached serving upon the clerk of court to furnish all defendants with a copy due to my financial circumstances. Mailed To: CLERK

PETER J. WELSH, ESQ.

OFFICE OF THE CLERK OF THE  
UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA  
WILLIAM J. NEALON FEDERAL (BLDG) &  
UNITED STATES COURT HOUSE  
235 NORTH WASHINGTON AVENUE  
POST OFFICE BOX-1148

SCRANTON, PENNSYLVANIA. 18501-1148  
TEL: (570) 207-5600

And thus Satisfies the Service requirements  
Pursuant to Fed. R. Civ. P. 5(b)(2)(E); L.R.  
5.7.

Dated: October 12, 2017.

Irving Murray

(Pro-se) Prisoner # KP-3561

(8-OF-8)

UNITED STATES DISTRICT COURT HOUSE  
MIDDLE DISTRICT OF PENNSYLVANIA

IRVING MURRAY, (PRO-SE)  
(PLAINTIFF)

CIVIL ACTION

NO: 03-17-CV-0491

VS.

DEMAND JURY TRIAL

JOHN E. WETZEL, (ETAL.)  
(DEFENDANT)

DATE: 10/12/2017,  
PROPOSED ORDER

ORDER

AND NOW, This \_\_\_\_\_ Day of \_\_\_\_\_, 2017,  
UPON CONSIDERATION OF THE PLAINTIFF'S  
IRVING MURRAY'S MOTION TO COMPEL DISCOVERY  
AND BRIEF IN SUPPORT TO COMPEL DISCOVERY  
COMBINED, THIS MOTION IS HEREBY  
GRANTED; JUDGEMENT SHALL BE  
ENTERED ACCORDINGLY.

BY ORDER OF THE COURT:

/s/

HONORABLE JUDGE RICHARD P. CONABOY  
UNITED STATES DISTRICT JUDGE .



JACK PARKER KZ 7442  
SCI MAHANOY  
301 MORRIS ROAD  
FRACKVILLE PA 17932

RECEIVED

OCT 26 2017

PERA  
DEPUTY CLERK

INMATE MAIL  
PA DEPT OF  
CORRECTIONS

Haster

10/24/2017

FIRST CLASS MAIL

US POSTAGE \$000.67



ZIP 17932  
011F12650000

PETER J WELSH ESQ  
OFFICE OF THE CLERK  
UNITED STATES DIST COURT  
MIDDLE DISTRICT OF PENNA  
WILLIAM J NEALON FED & US COURT  
235 NORTH WASHINGTON AVENUE  
SCRANTON, PA 18501-1148

10/24/2017 10:00 AM